



INDUSTRY CIRCULAR

**DEPARTMENT OF
THE TREASURY**

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

Number: 81-11

Date: September 22, 1981

RETURN OF DEFECTIVE PRODUCTS

Proprietors of Distilled Spirits Plants, Bonded
Wine Cellars, Taxpaid Wine Bottling Houses, Brewers,
Wholesale Liquor Dealers, Importers, and Others
Concerned:

PURPOSE. The purpose of this circular is to inform you of a forthcoming ATF ruling concerning the return of defective products as described in 27 CFR 11.32. This section is part of ATF's recently adopted trade practice regulations under the Federal Alcohol Administration Act, T.D. ATF-74, effective November 24, 1980. The ATF ruling will read as follows:

"The Bureau of Alcohol, Tobacco and Firearms has been asked to set forth its views with respect to the scope of 27 CFR 11.32 regarding the exchange of defective alcoholic beverage products for cash or credit.

"Section 5(d) of the Federal Alcohol Administration Act, 27 U.S.C. 205(d), provides in part that it shall be unlawful within jurisdictional limits set forth for any producer, wholesaler, or importer to sell, offer for sale or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any liquors with the privilege of return or where the transaction involves, directly or indirectly, the acquisition by such person, or agreement to acquire, from the trade buyer other liquors. This section provides further, however, that it shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

"Section 11.32 of the regulations provides that defective products may be exchanged for an equal quantity of identical products. The regulation is silent as to whether such products may be returned for cash or credit. The distribution scheme of alcoholic beverages is such that undue hardship would result from prohibiting the return of defective products for cash or credit. Section 11.32 simply provides, as one example

of an 'ordinary and usual commercial reason,' that the exchange of defective products does not establish an unlawful sales transaction.

"Held, section 11.32 does not preclude the return of defective products for cash or credit. Defective products which are unmarketable because of product deterioration, leaking containers, damaged labels, or mutilated and missing strip stamps may be exchanged for an equal quantity of identical products, or may be returned for cash or credit against outstanding indebtedness."

INQUIRIES. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

Stephen E. Higgins
Acting
Director

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

Official Business
Penalty for Private Use, \$300

Postage and Fees Paid
Department of the Treasury
Treas 564

